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| APPLICATION NO.         | FILING DATE | FIRST NAMED INVENTOR  | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-------------------------|-------------|-----------------------|---------------------|------------------|
| 10/663,403              | 09/15/2003  | Josef Alexander Hartl | PA0913.ap.US        | 2928             |
| 29159                   | 7590        | 02/08/2005            | EXAMINER            |                  |
| BELL, BOYD & LLOYD LLC  |             |                       | RADA, ALEX P        |                  |
| P. O. BOX 1135          |             |                       |                     |                  |
| CHICAGO, IL 60690-1135  |             |                       | ART UNIT            | PAPER NUMBER     |
|                         |             |                       | 3714                |                  |
| DATE MAILED: 02/08/2005 |             |                       |                     |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                        |  |
|------------------------------|------------------------|------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b>    |  |
|                              | 10/663,403             | HARTL, JOSEF ALEXANDER |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>        |  |
|                              | Alex P. Rada           | 3714                   |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on April 19, 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/5/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the method flow charts of claims 1-17 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to under 37 CFR 1.83(a) because they fail to show the description (label) for each of the reference numbers in figure 2 as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the

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application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

*Claim Rejections - 35 USC § 112*

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-5, 10, 14, 15 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1 the language, "the player electing to continue ordinary play of the game or surrendering by forfeiting 60% or 40% of the maximum wager and receiving credit for 40% or 60%, respectively of the maximum wager of the maximum wager" is vague and indefinite because the percentages of forfeiting and receiving cannot be determined. Is the percentage by

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forfeiting 60% or 40% or is the percentage by forfeiting one of 60% or 40%? Is the percentage by receiving 40% or 60% or is the percentage by receiving one of 40% or 60%?

*Claim Rejections - 35 USC § 103*

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-3 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sklansky et al. (US 6,511,068).

7. Sklansky et al discloses the following:

A player placing a maximum wager on the game, in which the examiner interprets the ante or initial bet to be placing a maximum wager, the player viewing an initial hand, the player electing to continue ordinary play of the game or surrendering by forfeiting a portion of the maximum wager and receiving credit for a predetermined portion, respectively of the maximum, and the game ending for the player as recited in claim 1.

The possible player's hand cannot be revealed in ending the game for the player as recited in claim 2.

The possible player's hand can be revealed in ending the game for the player, in which the examiner interprets player's hand capable of being revealed in ending the game for the player as recited in claim 3.

A player placing a wager in whole credit units on the game (column 16, line 64 – column 17, line 9), the player viewing an initial hand (figure 11), the player electing to continue ordinary play of the game or surrendering by forfeiting an amount closest in whole credit units to a predetermined portion of the wager and receiving an amount closest in whole credit for the predetermined portion, respectively of the maximum wager, and game ending for the player as recited in claim 16.

Sklansky et al does not expressly disclose the following:

The player electing to continue ordinary play of the game or surrendering by forfeiting 60% or 40% of the maximum wager and receiving credit for 40% or 60%, respectively of the maximum as recited in claims 1 and 16. Sklansky does however disclose a predetermined portion that may be any desired portion, such as, one-half of the original bet (column 14, line 60 – column 15, line 6), which is equivalent to the claimed forfeiting 60% or 40% of the maximum wager and receiving credit for 40% or 60% of the maximum wager. Given that the predetermined amount is regulated by a number of factors ranging from gaming regulations, to profit margins, daily earning and the like, one would provide the necessary modification to meet that desired parameters in order to cover the operating costs of the house (casino). By designating a predetermined portion of a returned wager, one of ordinary skill in the art would provide game players a choice to quit with less of a loss on a bad hand.

8. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sklansky et al. (US 6,511,068) in view of Delaney et al. (US 5,911,419).

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9. Sklansky et al disclose the claimed invention as discussed above except for the following:

The game being five-card draw poker and wild card variant of five-card draw poker as recited in claims 4 and 5.

Delaney et al teaches the following:

A method of playing card wagering games that enables players to select the playing card game to be played, which include the games of draw poker, deuces wild, and joker wild, in which the examiner interpret the different poker type game to be an equivalent to being five-card draw poker and wild card variant of five-card draw poker (figure 4) as recited in claims 4 and 5. By having different variations of poker, one of ordinary skill in the art would provide game players a selection a card games to be played.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the game of Draw Poker Dice to include five-card draw poker and wild card variant of five-card draw poker as taught by Delaney et al provide game players a selection a card games to be played.

10. Claims 6 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Draw Poker Dice (On-The-Square) in view of Sklansky et al. (US 6,511,068).

11. Draw Poker Dice discloses the following:

A player placing a maximum wager on the game against a first pay table (table A), the player viewing an initial hand, and the game is continued against a second pay table (table B) with payout rates on at least one hand being lower

than the payout rate for a same hand as in the first pay table (table A) and continuing play of the game as recited in claims 6 and 17.

Draw Poker Dice does not expressly disclose the following:

The player electing to continue ordinary play of the game or surrendering by forfeiting a predetermined portion of the maximum wager and receiving credit for a remaining portion of the maximum wager as recited in claims 6 and 17.

Sklansky et al teaches the following:

The player electing to continue ordinary play of the game or surrendering by forfeiting a predetermined portion the maximum wager, in which the examiner interprets the initial wager to be the equivalent of the predetermined portion of the maximum wager and receiving credit for a remaining portion of the wager (column 14, lines 60-65 and figure 11) as recited in claims 6 and 17. By having the option of surrendering by forfeiting a predetermined portion of the maximum (initial) wager, one of ordinary skill in the art would allow game players to make key decisions during game play by having the option to quit with a reduced amount of a loss on a bad hand.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Draw Poker Dice to include the player electing to continue ordinary play of the game or surrendering by forfeiting a predetermined portion of the maximum wager and receiving credit for a remaining portion of the maximum wager as taught by Sklansky et al to allow game players the option to quit with less of a loss on a bad hand.



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12. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Draw Poker Dice (On-The-Square) in view of Sklansky et al. (US 6,511,068) as applied to claim 6 above, and further in view of Charron et al. (US 5,542,669).

13. Draw Poker Dice in view of Sklansky et al disclose the claimed invention as discussed above except for the following:

The surrendering may be performed only when a maximum wager has been made in the wagering game as recited in claim 7.

Charron et al teaches the following:

A video poker game having wager amount qualifiers for activating certain features within the game like bonus rounds, bonus pay or the like based upon the number of coins wagered or a designated amount like maximum bet (column 12, line 43 – column 13, line 2). The surrendering capable of being performed only when a maximum wager has been made in the wagering game, in which the examiner interprets the wager amount qualifiers to be an equivalent to the surrendering being permitted when the player has placed a maximum bet (column 12, line 43 – column 13, line 2) as recited in claim 7. By having wager amount qualifiers for activating certain features, one of ordinary skill in the art would encouraging more players to bet the maximum while covering casino operating costs.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Draw Poker Dice to include surrendering capable of being performed only when a maximum wager has been made in the wagering game as taught by Charron et al to provide an interactive

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poker game by encouraging more players to bet the maximum while covering casino operating costs.

14. Claims 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sklansky et al. (US 6,511,068) in view of Wood et al. (US 6,342,007).

15. Sklansky et al disclose the following:

A visual display (figure 13), a plurality of player controls including a surrender (fold) player control (figure 13), and a processor and memory, the processor programmed to execute and display a poker game as recited in claim 8.

The processor further programmed to permit execution of a bet surrender when a maximum wager is placed, in which the examiner interprets the initial wager of the game to be an equivalent to the bet surrender when a maximum wager is placed as recited in claim 9.

The surrender is defined as one of either 40% or 60% of the initial wagered amount, in which the examiner interprets the predetermined portion to be equivalent and no different to the surrender defined as one of either 40% or 60% of the initial wagered amount (column 14, lines 60-65) as recited in claim 10.

The plurality of winning outcomes are five card poker comes (column 9, lines 5-12) as recited in claim 11.

Sklansky et al does not expressly disclose the following:

The processor further programmed to prohibit surrender when an initial displayed hand is one of a plurality of winning outcomes as recited in claim 8.

Wood et al teaches the following:

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A video poker game having an indicator for indicating to the player when an initial displayed hand is one of a plurality of winning outcomes (figure 1) as recited in claim 8. By having an indication of an initial win, one of ordinary skill in the art would provide game players with a visual indication of a winning outcome and to prohibit the player from inadvertently surrendering a winning outcome.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Sklansky et al to include an indicator for initial winning outcome as taught by Wood et al to provide game players with a visual indication of a winning outcome and to prohibit the player from inadvertently surrendering a winning outcome.

16. Claims 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sklansky et al. (US 6,511,068) in view of Charron et al. (US 5,542,669).

17. Sklansky et al discloses the following:

A player placing a wager to participated in a video poker game, displaying an initial hand of cards on a video game machine display (figure 1), providing an opportunity for the player to surrender a portion of the wager (column 14, lines 60-65) as recited in claim 12.

The surrender is either 40% or 60% of an amount wagered, in which the examiner interprets the surrender of a predetermined portion to be an equivalent to the surrender is either 40% or 60% of an amount wagered (column 14, lines 60-65) as recited in claims 14 and 15.

Sklansky et al does not expressly disclose the following:

Surrendering a portion of the wager unless the initial hand is a predetermined winning hand, providing an opportunity to replace cards, and resolving the hand as recited in claim 12.

The surrendering being permitted when the player has placed a maximum bet as recited in claim 13.

Charron et al teaches the following:

A video poker game having an indicator for visually informing the player that the initial hand is a predetermined winning hand (figure 4), providing an opportunity to replace cards, and resolving the hand (figures 3-5 and column 12, line 43 – column 13, line 2) as recited in claim 12.

A video poker game having wager amount qualifiers for activating certain features within the game like bonus rounds, bonus pay or the like based upon the number of coins wagered or a designated amount like maximum bet (column 12, line 43 – column 13, line 2). The surrendering being permitted when the player has placed a maximum bet, in which the examiner interprets the wager amount qualifiers to be an equivalent to the surrendering being permitted when the player has placed a maximum bet (column 12, line 43 – column 13, line 2) as recited in claim 13. By having an indication of a predetermined winning hand and wager amount qualifiers for activating certain features, one of ordinary skill in the art would encouraging more players to bet the maximum while covering casino operating costs.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Sklansky et al to include an

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indicator for informing the player that the initial hand is a predetermined winning hand, providing an opportunity to replace cards, resolving the hand and the surrendering being permitted when the player has placed a maximum bet as taught by Charron et al to encouraging more players to bet the maximum while covering casino operating costs.

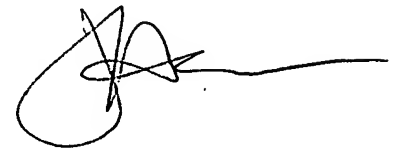
*Conclusion*

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Berman discloses a system and method for playing multiple, communal-card poker games simultaneously having a surrender type feature (paragraph 74).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alex P. Rada whose telephone number is 571-272-4452. The examiner can normally be reached on Monday - Friday, 08:00-16:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's acting supervisor, Jessica Harrison can be reached on 571-272-4449. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

*APR*  
APR



JESSICA HARRISON  
PRIMARY EXAMINER